

JK



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,366	07/29/2003	Jason P. Eaton	01-18	6288

30031 7590 01/11/2005

MICHAEL W. HAAS, INTELLECTUAL PROPERTY COUNSEL
RESPIRONICS, INC.
1010 MURRY RIDGE LANE
MURRYSVILLE, PA 15668

EXAMINER

WEISS JR, JOSEPH FRANCIS

ART UNIT	PAPER NUMBER
----------	--------------

3743

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/629,366

Applicant(s)

EATON ET AL.

Examiner

Joseph F. Weiss, Jr.

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07/29/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 21-30 are objected to because of the following informalities: Claim 21 has a sub part b that has a subpart (1) but no sub-part (2) which is normally the case when using sub-part format designations please state on the record no sub-part 2 exists and/or remove the sub-part (1) designation under b to insure the record is clear in regards to the completeness of the claim. Appropriate correction is required. (see your claim 31(d) which is exemplary).

Claim Rejections - 35 USC § 112

1. Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear if the first & second connectors are interconnectable or if the connectors are connecting to some other portions of the claimed invention.

Furthermore, it is uncertain if the strap is part of the headgear or the connector.

Also it appears applicant is attempting to claim a mask w/o claiming any specific headgear, but still positively claim both components of the connector, the actual invention thus making it uncertain if the headgear

In regards to the means plus function language, the means for releasably & rotateably interconnecting the connectors are the connectors themselves. Applicant makes no discrete disclosure/ differentiation b/t the connectors and their structure; they are one and the same, hence rendering the claims indefinite. Please to the following

Art Unit: 3743

redraft of the claim to see what an acceptable manner of claiming the invention is that appears to meet applicant's discerned intent:

1. A gas delivery mask comprising:

a shell adapted to connect with a head harness;

a means for releasably and rotateably interconnecting the shell with the head harness. (112(6) means plus function would pull in the structure of the connectors & all their present equivalents, and applicant can then bring in all the desired further limitations & characterizations of the connectors in the dependent claims).

--This claim is only to resolve the complex issues of definiteness raised by the current claim 1 and is not an indication of allowability.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-2 & 11-12 & 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Reischel et al (US 5924420).

In regards to claim 1, 11 & 21, Reischel discloses a gas delivery mask (Fig 6, # 10) comprising a shell (12) a first connector associated with the shell (Note flanges of seal 20 (bracketed by 22/24 in fig 6) that have lines drawing the interconnection to harness 26), a second connector (harness termini that interface w/ flanges) adapted to be connected to a headgear having at least one strap for securing the mask on a user

Art Unit: 3743

(note the straps of the harness); and means for releaseably and rotateably connecting the first connector and the second connector. (best seen in fig 3 note the button to hole interface arrangement b/t harness 26 & the flanges of seal 20 that would permit both release & rotation.

In regards to claim 2, 12 & 22 Rieshel discloses a gas delivery mask of claim 1, wherein the first connector is a female connector integrally formed with the shell and the second connector is a corresponding male connector.

4. Claim 42 is rejected under 35 U.S.C. 102(b) as being anticipated by Anscher (US 5502878).

Anscher discloses an elongated portion (14) that has an opening adapted to receive a strap (See col. 2 lines 20-22) e.g. from a gas delivery mask and a post (30) that extends from the elongated portion (note figs 5a-c & the supporting disclosure) and has opposing side walls (42) for rotateably receiving a connector associatable with a gas delivery mask shell.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-7, 16-17 & 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reischel.

Art Unit: 3743

In regards to claims 6-7, 16-17 & 26 Rieschel substantially discloses the instant application's claimed invention, but does not explicitly disclose the first connector is recessed with the shell and the first connector is a male connector internally formed with the shell and the second connector is a corresponding female connector. However, Reischel does disclose the integral design and the converse positioning of the male & female ends, i.e. a reversal of parts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have reversed such. Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

7. Claims 3-5, 13-15 & 23-25 and 8-10, 18-20 & 27-29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reischel in view of Anscher.

In regards to claims 3-5, 13-15 & 23-25 Rieschel substantially discloses the instant application's claimed invention, but does not explicitly disclose the first connector comprises a pair of a parallel walls and a curved notched wall abutting the parallel walls, the second connector comprises an elongated portion having an elongated opening adapted to receive a headgear strap and the second connector further comprises a post portion having an axis and extending from the elongated portion; and a bulbous end portion associated with the distal end of the post portion, the bulbous end portion adapted for insertion in the notched wall of the first connector so as to permit 360 degrees of rotation about the axis of the post portion. However, Anscher discloses such

Art Unit: 3743

(See the rejection to claim 42 & all the relevant supporting text in the reference). The references are analogous since they are from the same problem solving area, the interconnection of devices. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Anscher and used them with the device of Reischel. The suggestion/motivation for doing so would have been to provide greater comfort & security of the mask to a user with this interconnecting mechanism. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention. Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claims 8-10, 18-20 & 27-29 Rieshel substantially discloses the instant application's claimed invention, but does not explicitly disclose the first connector comprises a flexible post portion, and a cone-shaped shaft associated with an end of the post portion, the second connector comprises an elongated portion having an opening adapted to receive a headgear strap and wherein the second connector further comprises a post extending from the elongated portion and having opposed walls for rotateably receiving the cone-shaped shaft. . However, Anscher discloses such (See the rejection to claim 42 & all the relevant supporting text in the reference). The references are analogous since they are from the same problem solving area, the interconnection of devices. Therefore, at the time the instant application's invention was

Art Unit: 3743

made, it would have been obvious to one of ordinary skill in the art to have taken the features of Anscher and used them with the device of Reischel. The suggestion/motivation for doing so would have been to provide greater comfort & security of the mask to a user with this interconnecting mechanism. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention. Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 30 Riesel substantially discloses the instant application's claimed invention, but does not explicitly disclose a locking clamp coupled to the connecting strap. However, Anscher discloses such (See claim 32 of Anscher, i.e. it is a clamp capable of locking). The references are analogous since they are from the same problem solving area, the interconnection of devices. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Anscher and used them with the device of Reischel. The suggestion/motivation for doing so would have been to provide greater comfort & security of the mask to a user with this interconnecting mechanism. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention. Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine

Art Unit: 3743

choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

8. Claims 31-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reischel & Anscher as applied to claims 1-30 & 42 above which is incorporated by reference and furthermore:

Reischel & Anscher substantially discloses the instant application's claimed invention to include the common knowledge fact that air hoses are a common interface with such masks as disclosed by the combination (See Reischel col.1 lines 25-45).

Therefore it would have been obvious to provide an air hose as an air/oxygen source that interfaces with the mask to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

Conclusion

1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6691314, 6578572, 6374826, 6192886, 5555569, 5086768, 5069205, 3550588, 3441020, 2375147, 1310119

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Weiss, Jr. whose telephone number is (571) 272-4805. The examiner can normally be reached on Monday through Friday from 8 am until 4 pm.

Art Unit: 3743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JFW
1/4/05



Henry Bennett
Supervisory Patent Examiner
Group 3700